RENT REGISTRY ALTERNATIVES

By

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A Study prepared for the Commission of Inquiry into Residential Tenancies. The views expressed herein are those of the authors and do not necessarily reflect the views of the Commission or its Staff.

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Executive Summary

This paper reviews the various issues concerning the implementation of a rent registry system in Ontario under the existing rent review guidelines. Ten potential features of a registry are discussed in terms of the problems associated with choosing the best option. These features include: components of rent, means of informing tenant, access to rental information, start up procedures, frequency of filing and unit of reporting, procedure for landlords, coverage, monitoring and enforcement, penalties and base date.

Given the objective to enforce rent review, and given the constraints imposed by the current system, a central registration system is proposed, using the Notice of Rent Increase Form already required. Landlords with rent controlled units would be required to file information when they increase rents. Enforcement would be achieved using internal checks on files and access would be limited to those with a legitimate interest in the information.

There are several issues which require statistical evidence before designing specific features of a rent registry. For example, quantification of the prevalance and severity of illegal rent increases and information on costs to the RTC of operating a registry would be required. With this additional information, the design of a more detailed proposal for a central registry could be undertaken based on the features described in this paper.

I. Introduction

The rent review system in Ontario currently has no mechanism for monitoring rent increases unless applications are made to the Residential Tenancy Commission. Although Section 33 of the *Residential Tenancies Act* requires landlords to maintain a "rent schedule"[1] showing current and previous rents for each rental unit, this section of the Act has never been proclaimed.

The purpose of this paper is to review the issues related to a rent registry and to propose a system for monitoring rents in Ontario under the current rent review system.[2] If the rent review system is changed at some time in the future, there will be important implications for the design of a rent registry. Thus, the proposal only provides an example of the types of decisions that have to be made in designing a rent registry. It is not meant to be a definitive proposal since changes in the rent review system would necessitate modifications.

Each of the potential components of a registry is described and the options evaluated in terms of their benefits and costs. Benefits are measured by how well the particular feature meets the intended objectives; costs are estimated by the administrative ease for landlords, tenants and the RTC of implementing each feature and according to the financial cost of enforcement.

This paper is divided into four sections:

1) possible objectives and uses of a rent registry,
2) potential features of a rent registry — issues and alternatives,
3) a proposal for Ontario with rationales for that particular design,
4) summary and conclusion.

Also included are appendices on rent registries in other provinces, notes from a meeting of tenants and landlords regarding various proposals, and a copy of the Notice of Rent Increase form currently used to inform tenants of rent increases.

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[1] A rent schedule generally reflects a list of rents for a particular building. A rent registry, on the other hand, implies a centralized listing of rents for all units in a building or all rent-controlled units.

[2] The proposed rent registry is based on research into monitoring practices in other provinces (see Appendix A for details), discussions with landlords and tenants (see Appendix B) and transcripts from the Thom Commission hearings.

II. Objectives of a Rent Registry

A rent registry, to be associated with the *Residential Tenancies Act*, has two possible objectives.

First, a registry could act principally as a monitor of a rent regulation system. For example, under the current rent review system, rent increases would be monitored to ensure they are within the guideline or have been approved by the RTC, and that rents are not being increased when unit occupancy changes.

Second, a registry could also provide general information on the rental market in Ontario which could be useful in determining the strengths and weaknesses of the current system with an eye to restructuring. A detailed registry also would provide an important data base for any statistical analysis on the impact of rent review.

For most of this report, it is assumed that enforcement is the primary aim of the rent registry system. However, some modifications to the proposed system are considered in light of the second objective.

The enforcement objective is based on the historical background of Section 33 of the *Residential Tenancies Act* which is summarized as follows.

Illegal rent increases do occur and can be difficult to substantiate before the Residential Tenancy Commission.[3] The RTC received 1,585 applications from tenants for roll backs of unauthorized rents in 1981-1982. Of these, some were merged with landlord rent review applications and some were withdrawn; 1,011 were resolved either by mediation or a hearing. Of this group, 74 per cent resulted in a rent rebate.

This means a fairly significant percentage of rent increases were rolled back, but these rebate findings accounted for less than 0.1 per cent of all rent controlled units in the province. The problem may be greater than these figures indicate. The relatively few complaints could be attributable to the considerable difficulties tenants have in finding out whether their rent is, in fact, illegal. This occurs primarily when there is a change in tenancy since new tenants are less likely to know the previous rent.[4] Existing tenants also may want to know if past rents before they moved in were legal.

In the spring of 1978, tenants raised the issue of illegal rent increases at the Standing Committee on General Government hearings regarding the Consumer and Commercial Relations Green Paper on rent control. Initially, the Government drafted legislation requiring all landlords to maintain and make available

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[3] Tenants, in particular, claim that illegal rent increases occur frequently. Unfortunately, no significant statistical evidence exists to substantiate this claim. Data on the prevalence and severity of illegal rent increases would be beneficial before designing a potentially expensive monitoring system.

[4] Some numbers on turnover of rent controlled units would help to assess the significance of the illegal rent increase problem.

to tenants a schedule of current rents in their buildings. In later hearings, tenants argued that those landlords demanding illegal increases might also make dishonest entries in their rent schedules.

The legislation, Section 33 of the *Residential Tenancies Act*, was therefore revised with a provision requiring landlords to send a copy of this schedule to the RTC annually. Since it included a provision allowing the RTC to make "orders", this section of the *Residential Tenancies Act* was one of those affected by the Supreme Court decision on the constitutionality of the Act and was never proclaimed into law.[3]

The need to monitor rent increases still exists. It is thus assumed that the primary objective of a rent registry is to monitor rent increases in the province to ensure their compliance with the rent review guideline.

[3]Many landlords are not necessarily opposed to the idea of a rent registry system. See Appendix B.

III. Features of a Rent Registry System

The design of a rent registry system depends on the costs and benefits of the possible features. Alternative proposals have to be evaluated in terms of how they meet the enforcement objective and the costs involved including the administrative burden (on landlords, tenants, and the RTC) and enforcement.

This section considers the various issues and problems, comparing the costs and benefits of alternatives for each of the following features:

1. components of rent
2. means of informing tenant
3. access
4. start up
5. frequency of filing and unit of reporting
6. procedure for landlords
7. coverage
8. monitoring and enforcement
9. penalties
10. base date

Table 1 (see pages 6 and 7) summarizes, for each feature, the available alternatives, the procedures used in other provinces (based on the discussion in Appendix A) and the proposals for Ontario.

1. Components of Rent

The first issue is whether total rent should be reported or if rent should be broken down into basic rent plus charges for special services such as parking. It is important that no hidden rent increases exist whereby rent is increased according to the guidelines while services provided are reduced. Rents must apply to the same package of services in each year.

The benefit of requiring a breakdown of services on the rent increase form is to eliminate these hidden rent increases. Additional costs are associated with this proposal as landlords fill out more detailed forms and the RTC collects and monitors this information.

2. Means of Informing Tenant

Tenants can be informed of rent increases by several means: leases, notices on apartment doors, special rent increase forms, and a central registry (manual or computerized). The main issues are the convenience for tenants (and prospective tenants) and the accuracy of the information. (The issue of privacy is discussed under "access" below.) Tenants should be able to determine the rent and previous rent on any particular unit with ease.

In addition, not all tenants are given leases now. Thus, costs would be incurred in having landlords fill out lease forms and via the additional requirement that a lease stipulate previous rents. The benefit is that each tenant would receive the information provided on the lease. However, there would be no way of checking the accuracy of previous rents.

Notices on apartment doors also would produce additional costs for landlords. The problems, however, would be similar to those with leases in terms of verifying information on previous rents.

Notice of Rent Increase forms to tenants are already required and provide them with information on increases. There would be no additional costs to landlords since they already fill out these forms but the potential inaccuracy of the information continues to exist.

A central registry where landlords must send rent increase forms would:
1) allow tenants easy access to information; and
2) potentially increase the chances of landlords sending in accurate notices.
However, the cost of a central registry, as noted below, will be fairly significant.

Finally, a system could be devised with both rent increase forms and a central registry. The benefit of rent increase forms with a copy sent to a central registry is that tenants would be informed of rent increases directly as well as being able to find out what the *registered* rent is on a unit (by calling a central number). This could be checked against the information they have been given. The costs would include costs to landlords of filling out these forms.

The most significant financial outlay, however, would be the establishment of the central registry and the maintaining of records.[6] A manual system will suffice for small number of inquiries but computerization at the outset may prove the most cost efficient. The best possible estimate of volume should be obtained before a decision is made.[7]

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[6]The costs and benefits of a central registry are also discussed under monitoring and enforcement. As noted in section 8, it is the enforcement considerations that are most crucial for a central registry.

[7]In 1978, the Honourable Frank Drea estimated that the cost of a central manual rent schedule system in Ontario would be about $1.15 million annually compared to $1.60 million annually plus $1 million in start-up costs for a computerized system. These numbers obviously have to be updated. The computerized rent registry in B.C. was estimated to cost about $500,000 annually for one-third as many units as in Ontario.
It should be noted that the estimates for Ontario are somewhat dated. One might expect, for example, that labor costs have risen and computer costs fallen relatively over the past five years. In any event, a cost study is required.

TABLE 1

RENT REGISTRY — ALTERNATIVES AND PROPOSALS

FEATURES	ALTERNATIVES	OTHER PROVINCES			PROPOSALS
		B.C.*	Manitoba	Nova Scotia	
1. Components of rent	— total rent — basic rent plus special charges	— basic rent plus special charges	— basic rent plus services	— basic rent plus changes in service since previous rent increases	— basic rent plus separately charged services and facilities
2. Means of informing tenant	— lease — apartment door — special form to new tenants — central registry (manual/or computerized)	— notice of rent increase to tenants — central, computerized registry	— notice of rent increase to tenants — central, manual registry	— central, manual registry	— notice of rent increase to tenants — central (manual or computerized) registry
3. Access	— existing tenants — potential tenants — potential investors — anyone	— tenants and potential tenants may call in — potential investors may write in	— tenants may call in — prospective tenants may write in	— tenants may call for form to be mailed — others need waiver from landlord	— tenants and prospective tenants may call in for form to be mailed — prospective investors could write in with waiver from landlord
4. Start up	— notice on rent increase forms — media advertising — 3 month warning	—not available	—not available	—not available	— notice on rent increase form — media advertising — 3 month warning
5. Frequency of filing and unit of reporting	— annually — change in rent — change in tenant — once initially — whole building or unit	— change in rent of unit	— change in rent of unit and change in tenant	— change in rent of unit	— change in rent of unit

TABLE 1 (continued)

RENT REGISTRY — ALTERNATIVES AND PROPOSALS

FEATURES	ALTERNATIVES	OTHER PROVINCES			PROPOSALS
		B.C.*	Manitoba	Nova Scotia	
6. Procedure for landlords	— landlord sends forms to registry — registry sends forms to landlords to fill out	— landlord sends forms within 7 days of sending to tenant (3 months before increase)	— landlord sends in forms 3 months before rent increase	— landlord sends in forms 3 months before rent increase	— landlord sends in forms 3 months before rent increase
7. Coverage	— rent-controlled units — all units	— all units	— all units	— rent controlled units only	— rent controlled units only
8. Monitoring and enforcement	— central registry — tenant-initiated checks — registry-initiated checks	— central registry — registry-initiated checks as resources permit	— central registry — registry-initiated checks — tenant-initiated checks	— central registry — registry-initiated checks, as resources permit	— central registry — tenant and registry-initiated checks
9. Penalties	— fine — revoke increase	— increase void	— pay back invalid increase with interest of $100-$1000 fine	— increase is reviewed	— fines — revoke increases
10. Base date	— year(s) prior to rent review — current year	— current year	— current year	— 3 months retroactive	— current year

***The B.C. System has been discontinued.**

3. Access

A very important issue has to do with who has access to rent increase information — existing tenants, potential tenants, potential investors. The main concern has to do with privacy and who should be entitled to see rental information. Should it be confidential?

A second problem is how to identify bona fide inquiries since anyone is presumably a potential tenant — including creditors. There is also a concern that tenants (or potential tenants) would be able to get information on the rents of several units in a particular building. Since not all equivalent units rent for the same amount, this could cause problems among landlords and tenants.[8] Since equalization appears to be somewhat of an issue, the rent registry should be designed so as not to exacerbate it.

Rental information is available to existing tenants. Equally, for others, rental information would be made available only for bona fide potential tenants and only for those specific units they are interested in renting. For prospective investors, information would be available only with the permission of the landlord.

Therefore, a system has to be designed which benefits existing and potential tenants but at minimal cost to landlords and other tenants in terms of abuse of the information. It should be noted, however, that sales prices in the housing market generally are available publicly as is, information concerning rent review applications.[9]

Also, it is anticipated that most requests will be made by existing tenants since prospective tenants, having found a unit, will not likely check a registry before making a commitment. In other words, tenants will agree to rent the unit and then will check the registered rent. They may not want to take the time to check the rent if they feel they may lose the unit.

Again, the benefits of allowing tenants and potential tenants to have access to information is that they can check against illegal rent increases. The costs are in terms of any possible abuse of the information, as well as administrative costs.

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[8]Equalization of rents in a building is not required by rent review.

[9]Landlords feel strongly that rental information should only be made available to current or prospective tenants and only for available or soon to be vacated units. See Appendix B.

4. Startup

The announcement of a new central registry system could be done by a printed notice on the Notice of Rent Increase forms currently required.[10] Media advertising could be done and landlords given some warning (for example, three months) that the new system will be underway.

The benefits of announcing the registry are the completeness of coverage that will result. In terms of cost, the media campaign would be the most expensive followed by notices on rent increase forms. A three-month warning bears no financial cost.

Initially, forms would have to be sent in for all rent controlled units (and exemption forms for exempt units), assuming the objective is to monitor rent increases on rent-controlled units only. It may be desirable to require more information on the initial form, bearing in mind the additional costs of requesting more detailed information.

5. Frequency of Filing and Unit of Reporting

Rent increase forms could be filed annually; when there is a change in rent; when there is a change in tenant; or once initially. Given the current rent review legislation in Ontario which allows only one rent increase in each year, annual filing would be equivalent to filing when there is a change in rent. The advantage of filing when there is a change in tenant is that the tenant is officially made aware of the previous rent. Alternatively, it could be required that new tenants be able to see the most recent Notice of Rent Increase form or be allowed to get this information from a central registry.

Given current rent review guidelines, it could be possible to have landlords send in forms only once initially. The registry would then automatically add the legal percentage increase or the amount determined by order to establish the maximum legal rent in any given year.

There are two problems with this system, however. One is enforcement which is discussed in Section 8. The second is that some rent increases are *less* than the rent review guidelines so that subsequent rents above the guidelines would not be detected. For example, if a landlord increases the rent by four per cent in one year and eight per cent the next year (assuming a six per cent guideline), the eight per cent is an illegal increase. If filing is done once initially,

[10] Attention could also be drawn on Assessment Notices which are received by landlords and tenants but only mailed once a year.

the eight per cent increase would go through unnoticed. The registry would add six per cent each year to the initial rent registered. At the end of two years, the registered rent would be almost equal to the rent being charged even though the increase in the second year is illegal.[11] Filing each rent increase would avoid this problem but results in much greater costs in terms of administration for landlords and the RTC.[12]

A related issue concerns whether landlords should report rent increases once a year for the whole building or whether rent increases on each unit should be reported when they occur. The major concern is the relative administrative burdens (both for landlords and the RTC) of the alternative systems. With a yearly directory for the building, the rent increases would be valid for different time periods for each unit. Also, rent increase forms would still be required for each tenant.

In terms of the benefits, it is not clear whether whole-building reporting or unit-by-unit reporting makes any difference to the rent registry system, as long as accurate rents are submitted. Rent review is currently done on a whole building basis so, for those buildings already going through the rent review process, it probably would be easier to report rent increases for the whole building.

With respect to costs, it is also unclear whether it is easier for landlords (especially those not subject to rent review) to fill out a new form once a year for their whole building or to send copies of rent increase forms, which they have to give to tenants anyway, each time there is a rent increase.

6. Procedure for Landlords

There are two possible procedures: landlords could be required to send in rent increase forms to the central registry or the registry would send out forms to the landlord (with last year's information included) to be filled out and returned. The second alternative is not unlike the filing of income tax returns.

The benefits of sending forms to landlords would be greater simplicity for landlords since they would only have to update information from the previous year. It would also be easier for the registry to keep track of the information since the landlords would only be updating the forms. However, the administrative costs to the RTC of this more complex system would be substantially greater.

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[11] For example, if the initial registered rent is $300 per month, than at the end of two years, the legal rent would be $337.08. With a 4 percent increase in the first year and an 8 percent increase in the second year, the actual rent would be $336.96.

[12] There are no statistics on how many rent increases are less than the guidelines but it seems likely that this event would occur in smaller jurisdictions where vacancy rates are relatively higher. However, this is a fairly minor problem which does not necessitate an elaborate system for catching these illegal rent increases. It might be worth considering an alteration in the rent review guidelines to account for this problem.

7. Coverage

An important issue is whether exempt units should also be contained in the registry or just rent-controlled units. If the objective of a registry is to enforce rent review guidelines, then all that would be required is information on rent-controlled units and evidence that exempt units are truly exempt. Other information concerning rents of exempt units would not be necessary.

The benefits of including exempt units in the registry largely would be the information they provide with respect to the market for rental housing. If further changes are to be made in the rent review system, this kind of information would be very useful. The cost of including exempt units would be in terms of filing by landlords and collection at the registry (though monitoring of rent increases for these units would not be necessary). The inclusion of exempt units would definitely not be acceptable to landlords.[13]

8. Monitoring and Enforcement

Monitoring and enforcing rent increases can be done by requiring landlords to send forms into a central registry or by undertaking spot checks initiated by the registry or by tenants. A combination of a central rent registry and spot checks is another alternative.

The benefits of a central registry result from landlords being required to send in rent increases to a central place. The likelihood of sending "correct" notices is expected to be somewhat greater than in the case where landlords are only required to give rent increase notices directly to tenants.[14] Most of the enforcement necessary for the system could be done in the registry office by comparing past and present forms. Initial checking of the information could also be done to ensure accuracy. A central registry does not guarantee accurate statements of rent increases, however, and is not without significant cost.

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[13]Of all the features of a rent registry system, landlords appear to feel most strongly that exempt units should not be included. Aside from the administrative burden, they suspect that inclusion of exempt units in the registry will eventually mean inclusion of these units in the rent review system in the future.

[14]Landlords are opposed to a central registry because they feel that it implies that rent review is permanent, they feel it is an infringement on the privacy of landlords and tenants and they suggest that it would create a costly administrative burden for themselves and for the RTC. This aversion to a central registry may be attributed, in part, to landlords' feelings about the rent review system in Ontario in general. In discussions with landlords, many focussed on the six per cent guideline rate, the delays at hearings and perceived rent review injustices. Many associated these problems with those they expect to encounter with a central registry.

A system where landlords send forms to tenants and enforcement is through spot checks, would require considerable effort by the RTC. Also, it is not clear whether the RTC has constitutional right to enforce the rent review guidelines. Thus, the discipline of requiring landlords to file rent increases at a central registry may actually be a less costly way of enforcing the rent review guidelines.

While the costs of a central registry (manual or computerized) would have to be determined, the benefits, in terms of enforcement and ease with which tenants can find out registered rents, appear to be fairly significant.

The most costly system would be one in which there is a central registry and spot checks are undertaken. This system, however, would have significant benefits in terms of enforcement since it would be the most comprehensive.

9. Penalties

(The question or RTC's constitutional right to enforce rent review guidelines and penalties is a legal one which will not be debated here.) Assuming it has these legal rights, the RTC could impose penalties in the form of fines and revoking rent increases.

A penalty should be designed to deter landlords, at minimum cost, from charging illegal rents. Penalties should be provided for failure to follow the procedures and for giving out false information, but different fines for different violations should apply. For example, failing to register a rent may not be treated equivalently to reporting incorrect information. These decisions would have to be made part of a revised Act.

The benefit of imposing penalties is to deter landlords from imposing illegal rents. The costs involved are the RTC's administrative expenses and the financial penalties imposed on landlords who do not comply.

10. Base Date

Another feature of the rent registry system is the year in which the data in the registry begins. It could range from the current year, to the previous year, or to any number of years prior to rent review. The advantage of going back in time to 1976 (the first year of rent review) is to reveal past illegalities. Some unsubstantiated rents may have been used as a base for subsequent rent review orders. The problems of going back in time are many. For example, buildings may have been sold and records may be gone. Also, there are problems identifying those involved in past illegalities. Who gets the excess rent? Who pays back the excess rent?

If rent registration begins in the current year, tenants can still question the registered rents by making an application under Section 129 of the *Residential Tenancies Act*.[15] A rent registry with rents beginning in the current year does not necessarily imply amnesty for landlords who have charged illegal rents in the past. The costs of going back in time for the registry are large and the benefits appear to be fairly small.[16]

These ten features cover all of the issues that would have to be dealt with in designing a rent registry system. Many of the features are interrelated and thus cannot be considered in isolation but rather as a whole package.

There is one final consideration. Whichever features are chosen, the rent registry system will have to run smoothly and provide quick responses to requests for information. The monitoring of rent increases will not work if there are major delays in checking information or sending out rental information. The RTC will thus have to be prepared for the operation of the rent registry.

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[15]Section 129 of the Act permits the RTC, upon application by a tenant, to require a landlord to pay back excess rent.

[16]Interestingly, tenants were less concerned with past illegalities than they were about preventing illegal rent increases in the future.

IV. A Rent Registry Proposal

This section provides a brief, general presentation of a rent registry proposal followed by an analysis of each of the features outlined in Section II.

a) Description

Under this proposal, a central rent registry would be created at the Residential Tenancy Commission.[17] Landlords would be required to send a copy of the Notice of Rent Increase form to the Commission within two weeks of giving notice to the tenant.[18]

In practice, this means landlords would file a notice for each unit annually, since controlled units may have only one increase per year. Currently, a tenant must be given notice of a rent increase 90 days before it is to take effect. Landlords would be required to comply with this procedure effective three months after passage of the necessary legislation, thus giving them some warning. In addition, the new system could be introduced by detailed requirements on the notices as well via media advertising.

On receipt of the Notice of Rent Increase form, the RTC would check each rent increase indicated on the form to see whether it is within the current limit or has been approved by the Commission or is pending approval by the Commission.[19] If the increase is pending approval by the Commission, the RTC would update the unit file with a copy of the rent review order.

Landlords with exempt units would be required to file once indicating the reasons for the exemption. No information on the rent of the unit would be required. Landlords with temporarily-exempt units (for example, units that are vacant for 12 months, or renovated units which are exempt for one year) would be required to file once indicating the reasons and duration of the exemption. After the exemption period, they would be required to comply with the normal, controlled-unit procedure.[20]

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[17] It would also be possible to use existing regional offices for the rent registry. Under a computerized system, it might be administratively simpler to locate all forms in a central place.

[18] Form 1 or a substitute including all the information on Form 1 is already required under Section 60 of the *Residential Tenancies Act*. The Form includes the current rent, the amount of the increase, the percentage increase, the new rents, the date of increase, and charges for additional service. (See Appendix C.)

[19] This procedure, as will be noted, will require additional staff time at the RTC.

[20] These units are not exempt currently from the Act but only from the guidelines.

Tenants would be able to call the RTC (using a toll-free line) to find out the rent registered for their unit. The RTC would mail a form to the unit address indicating the registered rent. Prospective tenants would be able to call the RTC to find out the rent on an available unit, leaving their current address with the RTC. The RTC would contact the landlord to confirm the unit is available before sending the prospective tenant registry information.[21] Prospective investors in residential rental property could write to the Commission, including signed permission from the landlord, to receive a list of rents.

If the RTC believed a rent was illegal, it would notify the landlord and a Residential Tenancy Commissioner would investigate. If the rent was found illegal, the Commissioner — taking account of all of the circumstances — would determine how much rent would be refunded and to whom, and whether a fine also should be assessed. In the case where rents are not registered, the rent increase would not be recognized until it is registered. If a landlord is unaware of the requirements, special consideration would be given at the discretion of the RTC.

b) Analysis by Feature

This proposal addresses all of the features outlined in Section II of this paper as follows:

1. Components of Rent

Under the proposed scheme, the Notice of Rent Increase forms required under Section 60 of the *Residential Tenancies Act* would be sent to tenants and to the central registry by landlords. This form includes information on the current rent and charges for additional services, among other things. Specifying additional services directly solves the problem of hidden increases.

The Notice of Rent Increase form was chosen because it is already a requirement for landlords who now would be asked to make an additional copy for the registry. Also, this form could be changed in future depending on the information required. It would be administratively simpler, however, to use the same Notice of Rent Increase form for tenants as goes to the registry, at least initially.

[21] There may be some problems here in the case of sublets where landlords are not initially aware of an apartment's availability. They will eventually have to know about the vacancy, however.

2. Means of Informing Tenant

The system recommended is for landlords to provide existing tenants with a Notice of Rent Increase form, sending a copy to a central registry. Having a central number to call avoids the problem of relying on landlords (who may or may not be available) to provide rent information on the premises. As discussed below, a central registry also means registered rents are more likely to be accurate.

3. Access

The question of access has been resolved as follows: tenants could call in to receive rental information in the mail for the unit address. Prospective tenants could call in to receive rental information on an available unit which would be mailed to their current address.

In the interests of privacy, registry officials would ascertain if the unit is available and requests from prospective investors would be examined only with the permission of the landlord.

This method of access attempts to provide information to those who are entitled to it while at the same time discouraging frivolous requests. By having the forms mailed, an existing tenant has to be in the unit to receive the form and cannot call up asking for several different rents. Similarly, a prospective tenant would have to identify himself or herself, and the unit under question would have to be available. Finally, a prospective investor would be identifiable when writing in and would require the landlord's permission. If the landlord had any doubt about the prospective investor's legitimacy, the request for information could be denied.

Having the registry send out written forms is obviously much more costly than giving the information over the telephone. However, it is believed the expense is justified because method preserves privacy and restricts the abuses which could be made of the information. If privacy were less of a concern, simply telephoning in for the information would be easier and cheaper.

4. Start-up

It is appreciated that the start up costs will be significant but only a comprehensive system will prove worthwhile. It has been recommended that the media and the Notice of Rent Increase forms be used to highlight a new registry. Even with these notices, it is suggested some warning be given to landlords (e.g. three months). Initially, all landlords will have to send in forms identifying the rent-controlled units and the current rent or identifying exempt units. Subsequently, landlords of rent-controlled units would send in rent increase forms prior to the increase (or once a year) as described.

5. Frequency of Filing and Unit of Reporting

Notice of Rent Increase forms would be filed for each unit when a rent increase takes place (which is annually under the current rent review legislation). Although it might be desirable to issue new forms when tenants change, the cost of doing so — both for the landlord and the registry — is prohibitive. A new tenant, under the proposed system, merely has to call the central registry to determine the registered rent on a particular unit.

Unit-by-unit filing is recommended largely because rent increases occur at different times in any given building. Since landlords are required to issue Notice of Rent Increase forms anyway, the additional requirement of mailing a copy to the central registry requires minimal effort.

6. Procedure for Landlords

The proposed procedure is for landlords to send in Notice of Rent Increase forms to a central registry rather than have the registry mail out forms for the landlord to return. Although the latter scheme might be somewhat easier for landlords, it has not been recommended largely because of the increased administrative cost to the RTC.

7. Coverage

It is recommended, at least initially, that Notice of Rent Increase forms only be submitted for rent-controlled units. Exempt units would have to file only once initially, indicating the reason for the exemption (to allow verification) but with no rental information required.

Since it has been assumed the purpose of a rent registry system is to monitor the current rent review system, it would be necessary for the Commissioner to verify the status of units which claim to be legally exempt. Rent increases must be monitored since no guidelines are provided for exempt units. Also, the administrative cost to landlords and to the rent registry of including exempt units would be significant.

However, if the objective of a rent registry were to change (for example, to monitor the rental housing market more generally or to provide a more complete statistical base for the analysis of rent review) it may be desirable at some later date to include exempt units. If the rental market is to be regulated, then monitoring the whole market would provide important information for responsible regulation. Also, if regulation is to be expanded or discontinued, information on rents, rent increases and turnover rates would result in more informed decision-making.

8. Monitoring and Enforcement

A central registry (with spot checks if possible) has been recommended largely on enforcement grounds. Most of the enforcement necessary for the system could be done in the registry office by comparing past and present forms (manually or by computer).

It is felt the enforcement procedure required for any other system would be too onerous for the RTC, given the delays and staff shortages of the current rent review system. Also considered was a system in which landlords directly provide tenants with information about previous rents and in which the RTC could ensure, through spot checks, that illegal rent increases were not occurring.

Given the current backlog of the RTC and the constitutional constraints with respect to making orders, it was felt that the required spot checks would not be undertaken regularly. Enforcement under this system, then, would be weak. Spot checks would only pay a minor role in a centralized system.[22]

9. Penalties

Specific penalties have not been recommended. However, they should be sufficient severe to discourage landlords from charging illegal rents. They also should involve minimal cost to the RTC.

It is suggested that failure to send in the forms results in not recognizing the rent increase and that fines be applied where false information is sent in on the form.

10. Base Date

The base date for filing rent increase forms, under the proposal, would be the year in which the registry begins. Starting with an earlier year would be far too expensive and the problems too great especially in the case where buildings have been sold and landlords and tenants cannot be found. Even if previous rent increases could be recorded, it is not clear what could be done about past illegalities anyway.

Under the proposed system, tenants can question rent increases under the *Residential Tenancies Act,* as they do now. This means past illegalities will be checked when current rents come into question. Thus, there is less need to require rents back to the beginning of rent control in 1975.

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[22]If the rent review system were to change, however, so that the requisite spot checks would be undertaken, a system without central registration could possibly be devised.

V. Summary and Conclusion

This paper has reviewed the various issues concerning implementation of a rent registry system in Ontario. Ten potential features of a registry were discussed in terms of choosing the best option. The cost and benefits of possible alternatives were considered. Based on this analysis, a proposal for a rent registry in Ontario was put forward.

Given the objective to enforce rent review, and given the constraints imposed by the current system, a central registration system has been proposed using the Notice of Rent Increase form already required. Landlords would be required to file information when they increase rents and only landlords with rent controlled units would be required to file information regularly.

The system would require only minor modifications from current practice. Enforcement is possible using internal checks on files.

Access would be limited to those with a legitimate interest in the information but would be relatively easy for those individuals to obtain.

If additional objectives for the rent registry system are sought in the future, modifications to the proposal such as changes in forms, and inclusion of exempt units could be made. If the rent review system itself were modified, the rent registry system would again require further modification. Thus, a fairly flexible system is required which can be changed relatively easily (and without cost) to adapt to new rent review guidelines.

There are several issues which require statistical evidence before decisions can be made on particular features of a rent registry. Most important, an estimate of the prevalence and severity of illegal rent increases should be undertaken before a costly mechanism to discourage them is set up. Second, some information on the costs to the RTC of starting up and maintaining a rent registry is needed. This would include an estimate of the differential in cost between a computerized and a manual registry. Third, the cost of various means of monitoring and enforcing the rent increase forms is also required. This would involve, in part, an estimate of how many tenant calls are expected, for example. It would also require an estimate of how many additional start persons would be required at the RTC. This information would permit the design of a more detailed proposal for a central registry based on the features described in this paper.

APPENDIX A

PROVINCIAL RENT MONITORING SYSTEMS

Eight provinces in Canada have some form of rent control. Of these, two (Nova Scotia and Manitoba) have central registry systems. Until recently, British Columbia also had rent control with a central registry. Quebec uses a "new tenant form" for monitoring rent increases. This appendix summarizes each of these monitoring systems plus the legislation for Ontario.

Ontario — Rent Schedule

Section 33 of the *Residential Tenancies Act* (not proclaimed) requires every landlord to maintain and keep available on the property a schedule showing for each unit in the complex: the number of bedrooms; the current rent; services with a separate charge and the charge for their use; the preceding rent for the unit; the preceding charge for the services; and the date of the last increase. The schedule must be updated whenever the rent on a unit changes. A copy of this schedule is to be sent to the Residential Tenancy Commission annually (to the office in the appropriate region) where it shall be made available to "any person having an interest in the matter."

Nova Scotia — Manual Rent Registry

The Nova Scotia Rent Registry has been in operation since 1976. At that time, all landlords were asked to send in a form stating rent levels at October 1, 1975 (during the period of Federal rent restraints). Since then, landlords have filed a copy of the "notice of rent increase" each time they increase a unit's rent.

Copies of the rent increase form must be filed three months before the effective date of the increase. If the notice includes a rent increase in excess of the authorized increase, the notice will be considered an application for a rent increase. Only landlords with units included in rent review are required to send in these forms. However, all units except new buildings (which are exempt for three years from first occupation) are included in rent review.

Tenants who wish to find out whether their rent is legal or not are asked to send a form into the Commission identifying themselves and specifying the unit number. The Commission then mails back an "authorized rent" form including rent, services, and date of last increase. Anyone else wishing to request information is asked for a waiver from the landlord. In practice, prospective tenants who lack this waiver may also obtain information. Potential investors, with a waiver from the landlord, may also have access to rent information.

Files for each property are kept indefinitely. When forms are sent in, Commission staff check to ensure the increases are within the guidelines. The Commission also uses its discretion to "clarify" rent increases below the guideline taken in previous years by small landlords who neglected to send in forms (in a year where they apply for an above guideline increase). Increases above guidelines are not valid until they are approved by the Commission. When possible, information in the files is spot checked (usually by comparing listed rents with rents advertised in local newspapers).

There are approximately 75,000 rental units in Nova Scotia and the Commission gets three to five requests for information per day (one request per 15,000 units).

Manitoba — Manual Rent Registry

Manitoba, with about 125,000 rental units, has had a registry system since 1982. From its inception, landlords have been required to send the Rent Review office a copy of the "notice of rent increase" within 14 days of sending it to the tenant. Landlords must also give the tenant and the office a copy of a "new tenant notice" whenever a new tenant moves into a unit. All landlords, including those exempt from rent control, are required to send in these forms.

Tenants may call the office for information while prospective tenants, who receive the new tenant form, may write in. No one else has access to rent information.

Forms are checked to see whether they comply with guidelines. If the increases are above the guidelines, or the landlord has incorrectly identified the unit as control exempt, the Director will follow up the notice. Penalties for non-compliance are either to prosecute the landlord before an appeal panel and require him/her to pay back the excess rent with interest or imposition of a fine between $100 and $1000. Accuracy of data is not checked unless a tenant complains.

British Columbia — Computerized Rent Registry[1]

British Columbia, with 350,000 rental units, operates a computerized rent registry system.

Landlords send a copy of the notice of rent increase form to the Commission within seven days of sending it to the tenant. Immediate filing has been mandatory since 1977. Landlords must file forms for all units, but for exempt units they do not have to file forms if the rent increase takes place when a new tenant moves in.

[1]This system was recently disbanded.

On receipt of the forms, they are coded and entered into the computer. The program checks for discrepancies and flags illegal increases. Commission staff then follow up errors. If a landlord neglects to file a notice or the notice is incorrect, the rent increase is deemed void, until the correct notice has been filed. Almost all in-province landlords are aware of the requirements.

Tenants may call the central office to obtain information and to ensure notices have been filed. Prospective tenants also may obtain information over the telephone. Prospective investors must write in with permission from the landlord to receive information on all units.

The registry gets about 75 calls per day, and six to nine written requests. The system costs $450,000 to run annually (plus initial computer programming costs).

Quebec — New Tenant Form

As an alternative to a central filing system, Quebec uses a "new tenant information" form.[2] New tenants are provided with a form which includes rent paid and services provided to the previous tenant. The form is given directly to the new tenant and is not sent to the Commission. Penalties are provided for failure to follow this procedure correctly.

[2]The Quebec rent control system only requires a landlord to apply to the Commission if a tenant believes the difference between the old rent and the new rent is excessive.

APPENDIX B

MEETING ON RENT SCHEDULES

A meeting was held on June 28th, 1983 to discuss various rent schedules.

The meeting was chaired by Enid Slack. Sherry Glied was secretary. In attendance were:

A. Wisman — Landlord Self Help Centre
A. Alexander — Landlord Self Help Centre
Bill Rothwell — Greenwin
S. Rossby — Multiple Dwelling Standards Association
N. Hall — Belmont Property Management
J. Ellis — Belmont Property Management
E. Ronen — landlord
W. Krehm — O'Shanter Development
J. Schwartz — Multiple Dwelling Standards Association
G. Griesdorf — Goldlist
L. Rosengarten — Metro Tenants Legal Services
P. Dickenson — 265 Balliol Tenants' Association
J. Pavey — 265 Balliol Tenants' Association
M. Senyk — Northgate Tenants' Association
S. Marmor — Northgate Tenants' Association

In addition to those in attendance at the meeting, the following people were consulted in discussing the proposals:

S. Goetz-Gadon — Metro Tenants' Legal Services
J. Garson — 1531 Bathurst St. Tenants' Association
C. Dodds — 1840 Bathurst St. Tenants' Association
E. Mahoney — 108 Isabella St. Tenants' Association
Paul Murphy — 108 Isabella St. Tenants' Association
S. Peters — 49 Dundonald St. Tenants' Association
S. Shachter — 140 Elm Ridge Tenants' Association
H. Farrell — 1840 Bathurst St. Tenants' Association
P. Akler — North York Tenants
M. Shornel — landlord
R. Strom — Maysfield Property Management
H. Stricker — Heathcliffe Developments
Mr. Sidel — Belmont

Discussion at the meeting focussed on five issues related to monitoring illegal increases: whether there should be a central registry or a local system, what information would be available and to whom, how exempt units would be treated, how the system would be enforced, and the treatment of past illegalities.

Many landlords felt a requirement to file information with the RTC on a periodic basis would be onerous. Some objected to any system of registration at all. A few landlords and tenants were concerned about the cost of a central filing system in relation to the benefits possible from such a system. All tenants said it would be necessary to monitor illegal increases but agreed with the landlords that a central registry was not necessarily the way to obtain this result.

Landlords suggested tenants be provided directly with information about the previous tenant's rent by giving them a copy of the that tenant's Notice of Rent Increase. They felt this requirement would allow tenants to monitor illegalities while limiting the administrative burden on the landlords and the RTC.

A few tenants felt such a system would be open to manipulation by landlords and argued that a central registry, except at the startup, would be less open to such manipulation.

Landlords were also concerned about making rent-related information available to those without a legitimate interest in it. They felt information should only be available to current or prospective tenants. They also felt information should only be available on vacant or soon to be vacated units. A few tenants noted all information concerning rent review applications is public and that other rent information should also be available to the public at large.

Most landlords and tenants agreed that information on exempt units should be limited to the reason for exemption. They felt there was no reason to require information about exempt units. Some tenants felt all tenants, including those in exempt units, should benefit from the system.

Landlords and tenants agreed that the success of the system depended on enforcement of the requirements. Some tenants suggested that in cases where the landlord had been to rent review, he/she provide the tenant with a copy of the RTC Order as well as a copy of the previous tenant's last Notice of Rent Increase.

Tenants emphasized that all parties must be informed of their rights and obligations and that tenants should be encouraged to ask the RTC to intervene if they have not been provided with the required information.

Landlords and tenants disagreed as to whether tenants, the government, or both should initiate inquiries as to the accuracy of the information. Landlords felt this should be primarily a tenant responsibility while tenants felt the government had an obligation to intervene. Tenants also felt there should be penalties, beyond rent rollbacks, for landlords charging illegal rents.